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No. 87-

In the Supreme Court of the United States

OCTOBER TERM, 1987

WILLIAM EUGENE STRIPLIN,
Petitioner,

vs.

STATE OF KANSAS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

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QUESTION PRESENTED

Whether the admission of an FBI "rap sheet" in violation of established State procedures infringes Petitioner's right to due process, entitling him to reversal.

PARTIES TO THE PROCEEDING

William E. Striplin, Defendant-Appellant-Petitioner

State of Kansas, Plaintiff-Appellee-Respondent

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No. 87-

In the Supreme Court of the United States

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WILLIAM EUGENE STRIPLIN,
Petitioner,

vs.

STATE OF KANSAS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

William Eugene Striplin respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Kansas.

OPINIONS BELOW

None of the opinions pertaining to this Petition have been published in official or unofficial reports.

A copy of the trial court's Journal Entry is attached hereto as Appendix A (Johnson County District Court Case No. K-49994).

A copy of the unpublished Memorandum Opinion of the Kansas Court of Appeals affirming the trial court's Journal Entry is attached hereto as Appendix B (Appellate Case No. 59,586).

A copy of the unpublished Kansas Supreme Court Decision denying Petitioner's Petition for Review is at-

tached hereto as Appendix C (Appellate Case No. 86-59586-A).

JURISDICTION

During Petitioner's trial, the presiding District Judge, Honorable Janette Howard, allowed the State to introduce as evidence Petitioner's FBI "rap sheet".

Following his conviction and sentencing, the Petitioner perfected a timely appeal. The Kansas Court of Appeals issued its unpublished opinion on June 18, 1987, affirming the trial court's judgment.

Pursuant to Kansas procedure, Petitioner sought review of the Court of Appeals' decision in the Kansas Supreme Court. The Kansas Court of last resort issued its decision denying the Petition for Review on July 16, 1987.

Jurisdiction for the instant Petition for Writ of Certiorari is conferred upon this Court by virtue of 28 U.S.C. § 1257(3), which allows decrees rendered by the highest court of a State to be reviewed by the Supreme Court:

> "By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

This Petition is timely pursuant to Supreme Court Rule 20.1 and Supreme Court Rule 20.4, being filed within sixty (60) days of the date of final decision by the Kansas Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution reads as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the United States Constitution reads as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . ."

Relevant statutory provisions are as follows:

Kan. Stat. Ann. § 60-445 (1983) states:

> "Except as in this article otherwise provided, the judge may in his or her discretion exclude evidence if he or she finds that its probative value is substantially outweighed by the risk that its admission will unfairly and harmfully surprise a party who has not had reasonable opportunity to anticipate that such evidence would be offered."

Kan. Stat. Ann. § 60-447 (1983) states:

> "A trait of an accused's character tending to prove guilt or innocence . . . offered by the prosecution to

prove guilt may be admitted only after the accused has introduced evidence of his or her good character."

Kan. Stat. Ann. § 60-421 (1983) states:

"If the witness be the accused in a criminal proceeding, no evidence of his or her conviction of a crime shall be admissible for the sole purpose of impairing his or her credibility unless the witness has first introduced evidence admissible solely for the purpose of supporting his or her credibility."

STATEMENT OF THE CASE

A. Background information.

Petitioner was tried before a jury, convicted and sentenced for aggravated assault upon a law enforcement officer in violation of Kan. Stat. Ann. § 21-3411 (1974), possession with intent to sell marijuana in violation of Kan. Stat. Ann. § 65-4105(d)(13) (1986) and Kan. Stat. Ann. § 65-4127(b)(3) (1986) and possession of cocaine in violation of Kan. Stat. Ann. § 65-4107(b)(5) (1986) and Kan. Stat. Ann. § 65-4127(a) (1980).

He was sentenced to 5-20 years incarceration for each of these three (3) offenses.

B. The trial.

As established on appeal, District Judge Janette Howard erred in allowing the State to admit Petitioner's FBI "rap sheet" as evidence during trial. The Kansas Court of Appeals states:

"We agree that the trial court erred in admitting evidence of prior misdemeanor convictions, but conclude that the error was harmless.

In ruling upon Defendant's objection, the trial court stated:

> '[Y]ou [defense counsel] have brought into evidence prior criminal record, to the extent of whether it was a dismissal, a failure to convict, or whatever, you have brought it before this jury so that his [defendant's] entire record will become subject to cross-examination.'

Evidence of a prior crime or civil wrong may be admitted only for a limited purpose and subject to a limiting instruction. K.S.A. 60-445. K.S.A. 60-447 contains a narrow exception to this rule, stating that evidence of a prior conviction of a crime offered by the prosecution to prove guilt may be admitted 'only after the accused has introduced evidence of his or her good character.' Evidence of prior convictions for crimes involving dishonesty or false statement may be introduced for the sole purpose of impeaching the Defendant's credibility as a witness if he or she 'has first introduced evidence admissible solely for the purpose of supporting his or her credibility.' K.S.A. 60-421. See *State v. Macomber*, 241 Kan. 154, 734 P.2d 1148 (1987); *State v. Quick*, 229 Kan. 117, 621 P.2d 997 (1981); *State v. Bowers*, 218 Kan. 736, 545 P.2d 303 (1976); *State v. Harris*, 215 Kan. 961, 529 P.2d 101 (1974).

The court did not base its decision on either one of the above exceptions, but rather on its conclusion that Defendant opened the door to evidence of previous convictions by answering questions about his prior record on direct examination. The court held that Defendant's responses had opened the door for introduction of Defendant's entire record of misde-

meanor convictions, including two convictions for misdemeanor theft and one for unlawful deprivation of property.

By referring in his direct testimony to dismissal of prior charges for possession of marijuana and aggravated assault, Defendant intended only to attack the character and credibility of Detective Pruett, not to bolster his own character and credibility. That Defendant did not place his character and credibility at issue by his statements that charges against him had been dismissed is evident from his candid admission that he regularly smoked marijuana.

The State points out that Defendant's father also testified about Defendant's prior misdemeanor convictions. It contends that the record as a whole demonstrates that Defendant attempted to paint himself as an upstanding citizen and argues that, as a result, he lost the statutory protection provided by the above statutes. Much the same kind of an argument was made in *State v. Macomber*, 241 Kan. at 154. The Supreme Court rejected this argument, finding that '[n]one of the testimony relied on by the State was introduced for the sole purpose of supporting the Appellant's credibility.' 241 Kan. at 156. We are not persuaded by the State's argument that Defendant referred to his prior record solely to support his credibility or as evidence of good character. We hold that the trial court erred by permitting the admission of Defendant's previous convictions 'where such evidence was not within the scope of the direct examination and the Appellant had not introduced evidence for the purpose of supporting his credibilty' or character. *State v. Macomber*, 241 Kan. at 158."

Judge Howard then allowed the FBI "rap sheet" to accompany the jury to the jury room for deliberations.

A copy of the FBI "rap sheet" is attached hereto as Appendix D.

REASON FOR GRANTING THE PETITION

The Kansas Court of Appeals found that the Defendant's FBI "rap sheet" was admitted in error. However, it concluded this error was harmless. The court's error was not harmless, as it deprived Petitioner of due process before deprivation of liberty.

The due process clauses safeguard the principles that guilt must be established by probative evidence and beyond a reasonable doubt. *Taylor v. Kentucky*, 436 U.S. 478, 56 L.Ed.2d 468, 98 S.Ct. 1930 (1978). The rules of evidence found in Kan. Stat. Ann. § 60-445 (1983), Kan. Stat. Ann. § 60-447 (1983) and Kan. Stat. Ann. § 60-421 (1983) are an outgrowth of due process. They were designed to protect the accused from unfair and sometime unbridled prejudice. Erroneously admitted evidence poses three (3) dangers: First, the jury may well exaggerate the value of prior crimes, thinking because the Defendant committed a crime before it may properly be inferred that he committed this one. Second, the jury may conclude the accused deserves punishment because he is a general wrongdoer regardless of whether the prosecution has properly established guilt. Third, the jury may conclude the evidence presented on the Defendant's behalf should not be believed because he is a criminal. *State v. Bly*, 215 Kan. 168, 523 P.2d 397 (1974).

U.S. v. Camporeale, 515 F.2d 184 (2d Cir. 1975) illustrates the principle that the rules of evidence must be strictly adhered to in order to satisfy due process. There, the defendant in a perjury prosecution was entitled to a reversal because his past criminal record was not deleted from material given to the jury. This constituted a reversible error because the jury's knowledge of the defendant's past criminal record (possession of heroin and arrests and convictions for lesser offenses) could well have affected the outcome of the case. Similarly, the present case failed to follow established State procedures designed to protect defendants from the prejudicial hearsay inherent in an FBI "rap sheet". The Court of Appeals found the FBI "rap sheet" was admitted in violation of the due process safeguards contained in Kansas evidence statutes: Kan. Stat. Ann. § 60-445 (1983), Kan. Stat. Ann. § 447 (1983) and Kan. Stat. Ann. § 60-421 (1983). Furthermore, *State v. Taylor,* 198 Kan. 290, 424 P.2d 612 (1967) established the principle that "rap sheets" are inadmissible hearsay. As in *Camporeale,* the admission of this prejudicial hearsay in violation of due process safeguards may well have affected the outcome of the case.

In addition to the above, the error was amplified by allowing the FBI "rap sheet" to accompany the jury to the jury room for deliberations. This placed undue emphasis on the Petitioner's past offenses, allowed arguments to continue into the jury room and allowed the prohibited inference that Petitioner was guilty of the present offense because he committed prior offenses. *State v. Wilson,* 188 Kan. 67, 360 P.2d 1092 (1961).

CONCLUSION

Petitioner respectfully prays that his Petition for Writ of Certiorari be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

(Filed April 21, 1986)

IN THE
DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CRIMINAL DEPARMENT

No. K-49994

STATE OF KANSAS,
Plaintiff,

vs.

WILLIAM EUGENE STRIPLIN,
Defendant.

JOURNAL ENTRY

Now on this 31st day of March, 1986, this matter comes on for jury trial before the Honorable Janette Howard, Judge of the District Court of Johnson County, Kansas. The plaintiff, the State of Kansas, appears by Bruce W. Beye, an Assistant District Attorney. The defendant, William Eugene Striplin, appears in person and with his counsel, Thomas Brooks.

Thereupon, the parties announce themselves ready to proceed.

A jury is duly empanelled and sworn on their oath to well and truly try the facts here in issue and render

a verdict in accordance with the law and evidence presented.

The State makes its opening statement and presents evidence.

The Court admonishes the jury and announces the evening recess. Parties are instructed to return on the 1st day of April, 1986, for further proceedings.

Now on this 1st day of April, 1986, this matter comes on for continuation of jury trial with the parties appearing as before.

Thereupon, the State continues presenting evidence, and rests.

Thereupon, the defendant moves the Court to dismiss this matter. The Court, being well and duly advised in the premises, finds that said motion should be denied.

Thereupon, the defendant presents evidence.

Thereupon, the Court admonishes the jury and announces the evening recess. Parties are instructed to return on the 2nd day of April, 1986 for further proceedings.

Now on this 2nd day of April, 1986, this matter comes on for continuation of jury trial with the parties appearing as before.

Thereupon, the defendant presents evidence and rests. The State presents rebuttal evidence and rests.

Thereupon, the Court admonishes the jury and announces the evening recess. Parties are instructed to return on the 3rd day of April, 1986, for further proceedings.

Now on this 3rd day of April, 1986, this matter comes on for continuation of jury trial with the parties appearing before.

Thereupon, the defendant presents surrebuttal evidence and rests.

Thereupon, the defendant moves the Court for a directed verdict of acquittal or a mistrial. The Court, being well and duly advised in the premises, finds that said motion should be and is hereby denied.

The Court instructs the jury in writing and reads said instructions to the jury at which time arguments of respective counsel are heard by the jury in the case.

The jury retires in charge of a sworn bailiff of said Court to a jury room to deliberate on their verdict.

After due deliberation, the verdict of the jury is announced wherein the defendant, William Eugene Striplin, is found guilty of the offense of Aggravated Assault Upon a Law Enforcement Officer, as set out in Count I of the amended Complaint, in violation of K.S.A. 21-3411, as a class C felony, and guilty of the offense of Possession with the Intent to Sell Marijuana, as set out in Count II of the amended Complaint, in violation of K.S.A. 65-4105 (d)(13), and K.S.A. 65-4127b(b)(3), as a class C felony, and not guilty of the offense of Theft of Property of a Value of $150.00 or More, as set out in Count III of the amended Complaint, as that offense is defined and classified in K.S.A. 21-3701, as a class E felony, and guilty of the offense of Possession of Cocaine, as set out in Count IV of the amended Complaint, as that offense is defined and classified in K.S.A. 65-4107(b)(5), and K.S.A. 65-4127a, as a class C felony.

Thereupon, the Court further notes that the defendant's bond is increased to $10,000.00.

Thereupon, the Court grants the defendant ten (10) days in which to file a motion for new trial.

Thereupon, this matter is continued until the 11th day of April, 1986, at 9:30 A.M. for hearing of post trial motions.

The Court orders that a copy of this Journal Entry be forwarded to defense counsel forthwith.

/s/ Janette Howard
Janette Howard, Associate Judge
Court Number 13
Johnson County District Court

Submitted by:

/s/ Bruce W. Beye
Bruce W. Beye/ng
Assistant District Attorney

CERTIFICATE

I hereby certify that a true copy of the above and foregoing Journal Entry was placed the document receptacle, #122, which is located in the Office of the Clerk of the District Court, for Mr. William Brooks, Attorney at Law, on the 22nd day of April, 1986.

/s/ Bruce W. Beye
Bruce W. Beye

APPENDIX B

NOT DESIGNATION FOR PUBLICATION

(Filed June 18, 1987)

No. 59,586

IN THE
COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

WILLIAM EUGENE STRIPLIN,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; JANETTE HOWARD, judge. Opinion filed June 18, 1987. Affirmed.

Thomas Brooks, of Thomas Brooks, Chartered, of Overland Park, for appellant.

Bruce W. Beye, assistant district attorney, *Dennis W. Moore,* district attorney, and *Robert T. Stephan,* attorney general, for appellee.

Before MEYER, P.J., BRAZIL and DAVIS, JJ.

PER CURIAM: The defendant, William Eugene Striplin, appeals convictions for aggravated assault upon a law enforcement officer, K.S.A. 21-3411; possession of marijuana with intent to sell, K.S.A. 1986 Supp. 65-4105

(d)(13), K.S.A. 1986 Supp. 65-4127b(b)(3); and possession of cocaine, K.S.A. 1986 Supp. 65-4107(b)(5), K.S.A. 65-4127a.

On appeal, defendant contends the trial court erred by denying him a suppression hearing, by admitting into evidence guns discovered in the search of his house, and by admitting evidence of his previous misdemeanor convictions.

On November 7, 1985, while acting under the authority of a search warrant, Olathe police officers entered a house owned by defendant, William Eugene Striplin, at 435 South Water, in Olathe, Kansas. The officers knocked briefly on the door and then forcibly entered. Once inside, they encountered James Striplin, defendant's brother, in the bedroom and placed him in custody. They encountered defendant in the other bedroom. Defendant stood holding a loaded .45-caliber rifle, which was pointed to the side. A uniformed officer aimed his shotgun at defendant, informed him that he was a police officer, and demanded that he drop his weapon. Defendant eventually lowered the rifle and was disarmed.

The police found what defendant admitted to be a "fairly substantial" amount of marijuana in the house. They discovered about a teaspoon of cocaine and also found numerous 3- by 5-inch cards and sheets of yellow paper, which a detective testified contained records of drug transactions. In addition, the officers seized a sifter, a small (cocaine-laden) plastic straw, a plastic and screen strainer and tray, a "snow seal," a three-beam scale, an Ohaus scale, a large zip-lock bag with marijuana residue, numerous plastic baggies, and cigarette papers. The police recovered several weapons from the house, including an unloaded single-shot .410 shotgun and twenty shells, a

.30-caliber replica of an M-1 carbine, a .22-caliber Butler derringer, a fully loaded .22-caliber revolver, and a .25-caliber pistol.

Defendant testified that he smoked marijuana on a regular basis, but denied selling marijuana or knowing of marijuana, other than "roaches," or other drugs in the house. He attempted to establish that he did not reside at 435 South Water and that the drugs belonged to a tenant who leased the house from him. He claimed that the police had planted incriminating evidence and implied that the police had stolen a hidden strongbox that contained a large amount of cash from the house.

The State produced three witnesses who testified that they had purchased marijuana from defendant at 435 South Water on several different occasions. One of the witnesses came to the door to buy marijuana while police officers were searching the home. Police conducting the search answered at least one phone call to defendant from a person requesting drugs.

Officer Randall Mohr, who transported defendant and his brother to jail, testified that in the car defendant stated, " 'I should have wasted them. I had the chance and the machine gun.' " Detective Joseph Pruett, who booked the defendant, testified that during booking defendant stated that "he was a self-employed dope dealer," that "he had been selling dope for quite some time," that "everybody knows that," and that "rather than arresting dope dealers [the police] should be out arresting murderers and bank robbers." Defendant denied making all but the last of the above statements.

Forty-five to fifty items were examined for fingerprints. Defendant's prints were found on a three-by-five card, a yellow sheet of paper, and two plastic baggies.

The State also charged defendant with felony theft of a camera belonging to the police department. The jury, however, acquitted defendant of this charge.

The court sentenced defendant to three concurrent prison terms of five to twenty years.

The defendant first contends that he was entitled to a hearing on his motion for suppression of evidence as a matter of right because his motion was filed before trial. K.S.A. 22-3216.

The evidence seized pursuant to search warrant on November 7, 1985, was in continuous custody of the State until the date of trial. The complaint against defendant was filed on November 8, 1985. A preliminary hearing was held on December 6, after which defendant was bound over for trial. Defendant was arraigned before the district court on December 18, 1985. After granting defendant several continuances, the court scheduled trial for Monday, March 31, 1986. At 1:21 p.m. on March 28—the Friday before the scheduled Monday morning jury trial—defendant filed the following motion to suppress:

> "COMES NOW the Defendant, by and through his attorney of record, and moves the Court for its Order suppressing physical evidence which law enforcement officials took from the residence at 435 S. Water on November 7, 1985.
>
> "The Defendant specifically moves the Court to suppress physical evidence not included in the Search Warrant which the State has marked as evidentiary exhibits. Authority in the further basis for this Motion to Suppress will be submitted to the Court at the time this Motion is heard."

After the jury had been selected on Monday morning, defendant requested a hearing on his motion to suppress.

The State objected, arguing that it would be "incredibly disadvantaged were the Court to favorably rule on his case at this point." Defense counsel explained that he "had been scheduled before Judge Hougland's division and the opportunity to present the motion to suppress, based on my schedule, did not exist before today." The trial court denied defendant's request for a hearing, stating "[Y]our motion has been filed too late and I will not hear it."

K.S.A. 22-3216 provides in relevant part as follows:

"Motion to suppress illegally seized evidence. (1) Prior to the trial a defendant aggrieved by an unlawful search and seizure may move for the return of property and to suppress as evidence anything so obtained.

"(2) The motion shall be in writing and state facts showing wherein the search and seizure were unlawful. The judge shall receive evidence on any issue of fact necessary to determine the motion and the burden of proving that the search and seizure were lawful shall be on the prosecution. . . .

"(3) *The motion shall be made before trial, in the court having jurisdiction to try the case, unless opportunity therefor did not exist or the defendant was not aware of the ground for the motion, but the court in its discretion may entertain the motion at the trial.*" (Emphasis added.)

Although defendant filed his motion to suppress "before trial," his late filing assured that no hearing could be held before the scheduled jury trial. Under these circumstances, we hold the provisions of K.S.A. 22-3216(3) control and give the trial court "discretion" to decide whether to entertain the motion at trial. See *State v. Black*, 221 Kan.

248, 559 P.2d 784 (1977); *State v. Jackson,* 213 Kan. 219, 226, 515 P.2d 1108 (1973).

"Judicial discretion is abused when judicial action is arbitrary, fanciful or unreasonable, which is another way of saying that discretion is abused only when no reasonable person would take the view adopted by the trial court. If reasonable persons could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion." *State v. Martin,* 237 Kan. 285, 290, 699 P.2d 486 (1985). For the reasons set forth below, we conclude the trial court did not abuse its discretion by denying defendant a hearing on his motion to suppress.

First, defendant failed to establish that he did not have an earlier opportunity to file the motion or that he was unaware of the grounds for the motion prior to March 28. K.S.A. 22-3216(3). The record reveals no reason why defendant could not have advanced his motion to suppress well prior to March 28. Defendant should have known shortly after the search whether the police seized items not listed in the search warrants.

Second, the motion filed by defendant did not comply with the provisions of K.S.A. 22-3216(2) because it failed to include "facts showing wherein the search and seizure were unlawful." Defendant did not explain the grounds for his motion to suppress to the court. Thus, the court had no basis for concluding that the motion had any merit.

Finally, defendant has failed to show that the trial court's refusal to hold a suppression hearing prejudiced his defense. In his brief, defendant contends that the police seized items not listed in the search warrants. Defendant, however, has failed to include the warrants in the record on appeal. Nothing in the record on appeal contradicts

Detective Dennis Beach's testimony that he did not take anything out of the house that was not shown on the search warrants.

Based upon the record before us, we have no hesitancy in concluding that the trial court's denial of a hearing on defendant's motion to suppress was well within its discretion.

Next, the defendant contends that the trial court erred by admitting the seized firearms over his objections that they were irrelevant and that the risk of bias from their admission substantially outweighed their probative value. K.S.A. 6-401(b), -445.

In Kansas, "relevant evidence" is "evidence having any tendency in reason to prove any material fact." K.S.A. 60-401(b). Whether evidence is relevant is a matter of logic and experience, not a matter of law. *State v. Holley,* 238 Kan. 501, 504, 712 P.2d 1214 (1986) (citing *State v. Abu-Isba,* 235 Kan. 851, 857, 685 P.2d 856 [1984]). The admission of evidence is within the sound discretion of the trial court. 238 Kan. at 504 (citing *State v. Jakeway,* 221 Kan. 142, 558 P.2d 113 [1976]). An abuse of discretion exists only if no reasonable man would take the view adopted by the trial court. 238 Kan. at 504 (citing *State v. Wilkins,* 220 Kan. 735, 556 P.2d 424 [1976]).

The State offered the firearms in evidence on the issue of defendant's intent to sell marijuana:

> "It's our contention that these items are all contraband in that they go to show the intent of the defendant as a person involved in the narcotics trade. We think it goes directly to the res gestae in the case in that it shows a propensity to have weapons in the house in order to protect himself against other persons who are also involved in the trade, and I think

> that it goes directly to his intent as to the charge of posssesion with the intent to sell."

A reasonable person might take the view that the firearms, which were found in defendant's house, have some tendency, however slight, to prove that defendant was in the narcotics business. In addition, a reasonable person might consider the firearms relevant to the issue of defendant's intent to assault the law enforcement officers who entered his house to execute the search warrant. The trial court did not abuse its discretion by concluding that the guns were relevant evidence.

Furthermore, the trial court did not abuse its discretion by concluding that prejudice from the admission of the guns did not substantially outweigh the guns' probative value. K.S.A. 60-445. The prejudicial impact of the guns was, at most, slight. A single-shot .410 shotgun, a .22-caliber revolver, a .22-caliber derringer, a .25-caliber pistol, and a .30-caliber rifle constitute a motley assortment of weapons, not heavy artillery. No shells were found for the .25-caliber pistol or the .30-caliber rifle.

Finally, defendant contends the trial court erred by admitting evidence of his prior misdemeanor convictions over his objection. We agree that the trial court erred in admitting evidence of prior misdemeanor convictions, but conclude that the error was harmless.

In ruling upon defendant's objection, the trial court stated:

> "[Y]ou [defense counsel] have brought into evidence prior criminal record, to the extent of whether it was a dismissal, a failure to convict, or whatever, you have brought it before this jury so that his [defendant's] entire record will become subject to cross-examination."

Evidence of a prior crime or civil wrong may be admitted only for a limited purpose and subject to a limiting instruction. K.S.A. 60-455. K.S.A. 60-447 contains a narrow exception to this rule, stating that evidence of a prior conviction of a crime offered by the prosecution to prove guilt may be admitted "only after the accused has introduced evidence of his or her good character." Evidence of prior convictions for crimes involving dishonesty or false statement may be introduced for the sole purpose of impeaching the defendant's credibility as a witness if he or she "has first introduced evidence admissible solely for the purpose of supporting his or her credibility." K.S.A. 60-421. See *State v. Macomber,* 241 Kan. 154, 734 P.2d 1148 (1987); *State v. Quick,* 229 Kan. 117, 621 P.2d 997 (1981); *Statae v. Bowers,* 218 Kan. 736, 545 P.2d 303 (1976); *State v. Harris,* 215 Kan. 961, 529 P.2d 101 (1974).

The court did not base its decision on either one of the above exceptions, but rather on its conclusion that defendant opened the door to evidence of previous convictions by answering questions about his prior record on direct examination. The court held that defendant's responses had opened the door for introduction of defendant's entire record of misdemeanor convictions, including two convictions for misdemeanor theft and one for unlawful deprivation of property.

By referring in his direct testimony to dismissal of prior charges for possession of marijuana and aggravated assault, defendant intended only to attack the character and credibility of Detective Pruett, not to bolster his own character and credibility. That defendant did not place his character and credibility at issue by his statements that charges against him had been dismissed is evident from his candid admission that he regularly smoked marijuana.

The State points out that defendant's father also testified about defendant's prior misdemeanor convictions. It contends that the record as a whole demonstrates that defendant attempted to paint himself as an upstanding citizen and argues that, as a result, he lost the statutory protection provided by the above statutes. Much the same kind of an argument was made in *State v. Macomber,* 241 Kan. 154. The supreme court rejected this argument, finding that "[n]one of the testimony relied on by the State was introduced for the sole purpose of supporting the appellant's credibility." 241 Kan. at 156. We are not persuaded by the State's argument that defendant referred to his prior record solely to support his credibility or as evidence of good character. We hold that the trial court erred by permitting the admission of defendant's previous convictions "where such evidence was not within the scope of the direct examination and the appellant had not introduced evidence for the purpose of supporting his credibility" or character. *State v. Macomber,* 241 Kan. at 158.

Our inquiry, however, does not end with the conclusion that the trial court erred by admitting evidence of defendant's prior misdemeanor convictions. We also must assess the prejudicial effect, if any, that the introduction of the evidence had on the outcome of the case. *State v. Macomber,* 241 Kan. at 157-58; *State v. Henson,* 221 Kan. 635, 650-51, 562 P.2d 51 (1977); *State v. Harris,* 215 Kan. at 964.

We conclude that the error committed by the trial court in admitting evidence of defendant's prior misdemeanor convictions was harmless. The evidence of defendant's guilt in this case was overwhelming. A substantial quantity of marijuana, as well as drug paraphernalia and cocaine, was found in the house owned by defendant at

the time he was arrested. The State produced three witnesses who had purchased marijuana from defendant on previous occasions at his house. Moreover, defendant did not dispute that he held a gun when the officers broke into the house. Finally, the convictions admitted into evidence were misdemeanors, not felonies. Defendant's father already had informed the jury that defendant had been convicted of misdemeanor offenses as part of his testimony on behalf of his son.

We conclude that defendant received a fair trial despite the erroneous admission of the prior misdemeanor convictions. Overwhelming evidence supported defendant's conviction on all three counts. The error committed by the trial court did not affect the outcome of the trial.

Affirmed.

APPENDIX C

(Dated July 16, 1984)

IN THE
SUPREME COURT OF THE STATE OF KANSAS

No. 86-59586-A

State of Kansas,
Appellee,

v.

William Eugene Striplin,
Appellant.

You are hereby notified of the following action taken in the above entitled case:

PETITION FOR REVIEW.

DENIED.

Yours very truly,

Lewis C. Carter
Clerk, Supreme Court

Date July 16, 1987

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APPENDIX D

MASTER

12-17-85

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
IDENTIFICATION DIVISION
WASHINGTON, D.C. 20537

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CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
Olathe Kans	William Eugene Striplin 39702	7-27-71	grand T	amend to m'sd 6 mos CJ, pay costs
Olathe Kans	William Eugene Striplin 46224	4-17-74	poss of marij (28) 3562	5-17-74 Dism
Olathe KS	William Eugene Striplin 52001	4-22-76	Poss Of Marij	Dism
erland Park	William Eugene Striplin 4166	11-29-78	theft under 100	5-1-79 $105 10 das jl 1 yr prob
FORMATION IS RESTRICTED AS TO USE ATION CIVIL AND CRIMINAL PENALTIES R MISUSE. COMPLETENESS AND ACCURACY IN 90 DAYS. IT IS RECOMMENDED IT BE DE- D AFTER THAT TIME.				
lathe Kans	William Eugene Striplin 77290	12-3-82		found guilty unlawful deprivation of property(m) sentenced to 1year County Jail fined $1000 & costs granted 2 years probation

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CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
SO Olathe KS	William Eugene Striplin 90123	11-7-85	NCIC 313560 sale of marijuana NCIC 41-2300 possession of stolen property	
PD Olathe KS	William Eugene Striplin 3A000161	11-7-85	1. felony possession of marijuana with intent to sell 2. felony theft	

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FRED ALLEN, SHERIFF
JOHNSON COUNTY, KANSAS